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AFRICA REVIEW

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Nigeria: Constitutionalism--Past, Present, and Future

Nigeria's new constitution, which will provide for a civilian government in October 1979, is the latest step in a long quest for a viable political system that has seen the adoption of six other constitutions since 1922. Officially promulgated last September by General Obasanjo's military regime, the document provides the legal ground rules intended to govern Nigeria's future politics, economic policies, and conduct of foreign affairs.

The constitution was drafted in 1976 by a government-appointed commission of civilian experts and was reviewed earlier this year by an indirectly elected constituent assembly of civilians. The two bodies were left remarkably free from interference, but the constitution does reflect the wishes of Nigeria's military leaders.

Many Nigerians do not believe the new constitution offers a lasting solution to the problem of governing the country. Feelings are particularly mixed among Muslim northerners whose considerable opposition to an executive presidency and support for a federal Islamic court of appeals were overridden. Serious controversy, reflecting Nigeria's traditional ethnic, regional, and religious cleavages, did at times threaten agreement on a new constitution, but have been papered over for now. This underscores the determination of both civilians and the military to achieve democratic rule on schedule. Even so, many informed Nigerians pessimistically assume that the Second Republic is likely to collapse in a matter of time from much the same problems that undermined Nigeria's first civilian government which lasted only five years after independence in 1960.

The confrontational style of politics and turmoil displayed during much of the constituent assembly's deliberations bodes ill for the successful operation of a civilian regime. That the body produced a constitution at all was due primarily to the timely efforts of the

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military leadership and the assembly's own forceful chairman to separate the contestants and to prevent a complete breakdown. There are some encouraging indications that the assembly experience may have reminded veteran civilian politicians, particularly those in the north, of what went wrong in the early 1960s and of the need for more responsible behavior.

An eclectic document, the new constitution incorporates unique Nigerian features while drawing on basic elements of Western-style democracies, particular that of the US whose political institutions are much admired by the Nigerian elite. It is considerably longer and more complex than the US constitution, however, and will pose real challenges for Nigeria's inexperienced civilian politicians to translate into a workable and lasting political system. There are gray areas in the constitution open to various interpretations that will test the effectiveness of the changeover to civilian government and the good will of those involved. The future role of several independent and advisory commissions called for by the constitution may be a source of contention.

On the positive side, there are praiseworthy features of the constitution that are calculated--if they can be transformed into reality--to enhance unity and a national outlook in political activity. These include a strong federal system with an executive president, requirements for nationally oriented, broad-based political parties, and an avoidance of rigid and divisive ideological commitments. Such provisions reflect the military's desires and their assessment of the failures of past Nigerian constitutions.

Groping Toward a Viable Political System

So far, Nigeria has been unable to evolve a democratic tradition, although the trend since 1966 under military rule has been toward a more centralized and workable government. The country's central problem since well before independence in 1960 has been to devise a constitutional system that can accommodate its considerable tribal, regional, and religious diversity in a framework of national unity. This task has involved sharp controversy and often violent political changes--three military coups and a civil war.

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Nigeria's postindependence experiment with multi-party democracy failed due to the inability of the country's three main tribes to coexist under a weak, regionally based federal parliamentary constitution inspired by its British colonizers. The vastly larger northern region controlled the machinery of federal government. Three regional-tribal power blocs vied for supremacy, with ethnic loyalists taking priority over concern for national unity. Political machinations by the Hausa-Fulani of the north, the Ibo in the southeast, and the Yoruba of the southwest reflected their fear of domination by a coalition of the other two. Minority tribes within the three regions worried about their welfare at the hands of the big tribes. Overall, ethnic antagonisms were greatly exacerbated by the prospect of perennial political control by the more populous Muslim north.

The first military coup in January 1966 transferred power to Ibo Army officers who sought to establish a single state as their formula for uniting and governing Nigeria. This alarmed northerners who viewed the move as a plot to impose Ibo domination on the country. Six months later, a northern led countercoup resulted in the ascendancy to power of Nigeria's minority tribes as brokers between the large tribes. The government was revised to create a stronger federal structure, and Nigeria's regions were replaced by a system of 12 states to reduce the pervasive regional power of the large tribes and to give minorities a larger political voice.

The Ibo refused to accept the new leadership and insisted on full regional autonomy. The new state structure was the final step that triggered the secession of the predominantly Ibo eastern region in 1967 as the Republic of Biafra and subsequent civil war. The federal victory in 1970 established that the army would not allow separatism to break up Nigeria and helped to forge a stronger sense of national unity. Relative calm prevailed in the postwar years until the regime began implementing plans to return Nigeria to civilian rule. This effort was scrapped in 1974 as civilian political debate and campaigning began to rekindle old ethnic animosities.

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The leaders of a third military coup in 1975 were motivated by a determination to end political stagnation, reduce corruption, and start anew the process of restoring civilian rule. The number of states in the federation was increased from 12 to 19 to provide a better regional and tribal balance. The new prominence of Hausa-Fulani and Yoruba in the government, coupled with plans to reduce the oversized Army, provoked an abortive coup by minority tribesmen in 1976 in which the Hausa head of state was assassinated and replaced by a Yoruba and the country's current leader, General Obasanjo.

Main Features of the New Constitution

In its statement of guiding principles, the constitution stresses that the overriding goal of a civilian government is to promote national unity while accommodating the diversity of Nigeria's peoples. To this end, the composition of the government and the conduct of its affairs will reflect Nigeria's "federal character," and national integration will be encouraged. The predominance of narrow ethnic and sectional interests is prohibited.

The constitution contains broad human rights guarantees. These include the right to life, privacy, and property ownership; freedom from arbitrary arrest, inhumane treatment, and denial of fair hearing; protection against discrimination and exclusion from the political process; and freedom of thought, religion, speech, press, assembly, and movement. These guarantees can be suspended, however, when a state of emergency is proclaimed by the president.

There also are provisions to ensure public accountability of governmental officials and prevent corruption and abuse of office. Nonetheless, too many interests will be involved in a civilian government to make action against corruption--long endemic in Nigeria--politically expedient.

The constitution provides for a federal division of power along US lines with separate executive, legislative, and judicial branches of the national and state levels. The existing 19 state governments and local

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governments of elected councils have been retained. They are the evolutionary product of various de facto measures designed to achieve an acceptable balance of power between the central government and the country's diverse regional and local interests.

At this stage, many informed Nigerians display considerable ignorance and confusion about Nigeria's new presidential system of government. In particular, senior civil servants at both the federal and state levels appear to feel that while the presidential model may seem superficially to fit Nigeria's need for leadership in the context of a diverse society, it is too complex for Nigeria. Moreover, many doubt the players can learn the roles expected of them to make the system operate successfully.

The federal president has broad executive powers and controls the armed forces as commander in chief. The president and vice president must be at least 35 years old and come from different sections of the country and are directly elected and limited to two four-year terms. The winning team must obtain a plurality nationwide and one-quarter of the votes in 13 of 19 states. Otherwise, the selection from among the two top contending slates is thrown to federal and state legislators who act as an electoral college and make their choice by simple majority vote.

The president can be removed from office if he is found guilty of gross misconduct by a two-thirds vote of the federal national assembly. In the event that the president dies, resigns, or is permanently incapacitated, the vice president serves the remainder of his term of office. A vice presidential vacancy is filled by the president with approval of the national assembly.

The president is empowered to appoint special advisers, who are likely to wield considerable de facto power, and he must include in his cabinet at least one minister from each of Nigeria's 19 states. Only cabinet appointments, however, require confirmation by the federal senate. The president is free to choose cabinet members from inside or outside the federal legislature. Provision is made for the creation of 14 executive

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commissions and councils with advisory roles or independent supervisory powers. These include such bodies as a civil service commission, an electoral commission, a national defense council, and an economic council.

The federal National Assembly consists of two houses directly elected to concurrent four-year terms. The Senate has five members from each state for a total of 95, while the House of Representatives has 450 members based on the 1963 census. House seats are subject to reapportionment every 10 years on the basis of a new population census. Under the existing formula, the 10 states that comprise the former northern region will have a 30-seat edge in the House and a five-seat edge in the Senate over the rest of the country.

The legislature will operate on a committee system with investigatory and evidence-gathering powers similar to that of the US Congress. Proposed legislation is submitted by the president or may originate in either house. The president has 30 days to approve or reject a bill passed by both houses. Presidential withholding of assent can be overridden by a two-thirds majority in both houses. When revenue and appropriation bills are stalled, joint committees may be convened to resolve differences between the two houses. These same legislative provisions generally apply at the state level.

Constitutional amendments originate in the federal legislature. Approval requires a two-thirds vote of both houses and a simple majority vote by two-thirds of the state legislatures.

States have governors, deputy governors, and a unicameral House of Assembly--all elected to four-year terms. The winning gubernatorial state must obtain a majority statewide and at least two-thirds of the votes in the state's local government areas. Each state's House of Assembly consists of three times the total number of seats that the state has in the federal House of Representatives, but never less than 40 members. There also are state councils of traditional chiefs who have advisory roles concerning customary and cultural affairs.

As for the judicial system, there are three federal courts whose judges are appointed by the president with

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the consent of the Senate. The Supreme Court handles disputes between the central and state governments as well as those between states and such other jurisdiction as may be given it by the federal legislature. It also hears appeals from the federal appellate court. The latter court reviews cases from the federal high court and various state courts. The federal high court has the power to review federal revenue matters and other legislative subjects as prescribed by the federal legislature.

Each state has a high court that handles civil and criminal cases in modern law. There also are state appellate courts that handle cases involving Islamic or other forms of customary law. Islamic law cases may be heard on appeal at the federal level by an ad hoc panel of the federal appellate court. This was a compromise arrangement adopted by the constituent assembly after it rejected the north's controversial proposal for a separate federal Islamic court of appeals.

Regarding foreign policy, the constitution directs that the government shall "promote African unity, as well as total political, economic, social, and cultural liberation of Africa and all other forms of international cooperation conducive to the consolidation of universal peace and mutual respect and friendship among all peoples and states, and shall combat racial discrimination in all its manifestations." This provision commits Nigeria's future civilian government, on paper at least, to continue the Obasanjo regime's preoccupation with ending white minority rule in southern Africa and promoting inter-African political and economic unity.

It is not clear to what extent the foreign policy powers of the president will be limited by the federal legislature. The possible diffusion of policymaking powers under the constitution may make it more difficult for a civilian government to act in this realm. The National Assembly, for example, does have the power to ratify treaties. The constitution specifically prohibits the president from deploying military personnel outside Nigeria on combat duty without Senate approval. The president cannot declare war without the sanction of a joint resolution of both houses.

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Despite the president's apparently strong powers, the return to civilian rule will affect to some degree the government's ability to act in the foreign policy area. The divisive forces in Nigerian society can be expected to become more prominent. The government will have to contend with a more outspoken press than was the case under military rule and vocal legislators belonging to opposition parties. A civilian government may thus find it somewhat more difficult to support as actively US initiatives in southern Africa and to associate itself with other Western efforts which are in Nigeria's broad interests. Growing domestic economic restraints, caused by diminished oil revenues, might also create some pressure for a less active international role.

As for economic policy, the constitution calls for continuation of a mixed economy, similar to the present system. This reflects the prevailing feeling in Nigeria today that a radical-socialist approach to economic advancement does not provide the best road to development.

Continued state operation of all major economic sectors is provided for in line with Nigeria's long term goal of assuming eventual control of its developing economy, which is now heavily dependent on foreign investment, loans, and managers. In line with Nigeria's existing program to indigenize business gradually, the federal legislature is empowered to create a body to administer indigenization laws and to review periodically and make recommendations regarding the issue of foreign-owned businesses operating in Nigeria. Otherwise, the constitution directs the government to promote planned and balanced development for the maximum welfare of all Nigerians.

Areas of Future Constitutional Controversy

The adoption of a new constitution will not end longstanding controversy over politically sensitive constitutional issues that go to the heart of the struggle for power among Nigeria's competing ethnic, regional, and religious interests. Some of these issues could re-surface fairly soon after the transfer of power next October to pose serious challenges to the new civilian government.

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It is quite possible that Muslim northerners under civilian rule may reopen their divisive proposal for a federal Islamic court of appeals which many southerners reject as favoritism and as having the affect of giving greater government sanction to Islam as a religion. If they do so, northern strategy would be to support the creation of additional states in Nigeria's federal system if southerners would back a constitutional amendment to provide for such a court. Northerners would be seeking to capitalize on fairly widespread sentiment in the more ethnically diverse south to create new states that enhance that region's political importance.

The question of additional states, if not handled carefully, might upset the delicate north-south balance of relative equality in numbers of states. If carried too far, this could result in the political balkanization of Nigeria and an unwieldly number of economically troubled states. The new constitution provides for a complicated procedure which makes it difficult to create more states. If widespread agitation ensues for new states, however, there could be strong pressure to amend the constitution to make the process easier.

The volatile question of revenue allocation between the federal and state governments was left to the federal legislature to decide. There is some pressure, however, to write into the constitution a permanent formula for dividing revenue. The four oil-producing states in southeastern Nigeria have long maintained they are not receiving a fair share of federally distributed revenues under the formula now used by the military government. There are equally strong feelings among the nonproducing states that they must protect and increase their share of revenues, especially those in the north to avoid southern economic and political domination.

The crux of federalism in Nigeria has always been the distribution of revenues between the central government and the states. In terms of real power, there is no question that the hand of the federal government has been greatly strengthened in recent years by its firm control of oil money. No single factor so influences the political power and economic viability of Nigeria's states and regions as the money available to

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them, for the majority are not economically self-sufficient. Indeed, one of the most powerful incentives to national unity in Nigeria is the dependence of the states and localities on federal apportioned revenue.

It appears that civilians will be spared until 1989 the constitutional requirement that the government conduct a national population census every 10 years. Updated census figures are badly needed for policy planning and for dealing with such matters as the question of new states and revenue allocation.

Census taking in Nigeria, however, has historically been one of the most politically controversial and potentially explosive issues. The figures invariably provoke discord over their acceptability because they are seen by Nigeria's competing groups as determining their political weight in the central government. The previous military regime sought unsuccessfully to complete a census in 1973, and it is difficult to imagine that a civilian government would prove more equal to the task.

The military government, in promulgating the new constitution, did make some modifications that a civilian government might be tempted to alter by constitutional amendment. Overturning the military's controversial provision for land reform probably would meet with popular approval, particularly among southerners whose traditional land holding system was the most directly affected. The provision conflicts with the constitution's guarantee of private ownership and in effect nationalizes all land and is vague on the issue of compensation. The stated aim is to redistribute land in order to speed up economic development.

The military also deleted a constitutional provision that would have imposed a quota system on the Army based on the population of each state. Civilians apparently inserted the provision to reduce the fear of domination by one section of the country through its strength in the Army. To the regime, however, it raised the specter of civilian tampering with the existing ethnic balance in the Army and demobilization, either of which could easily undermine stability and spark a coup. The military

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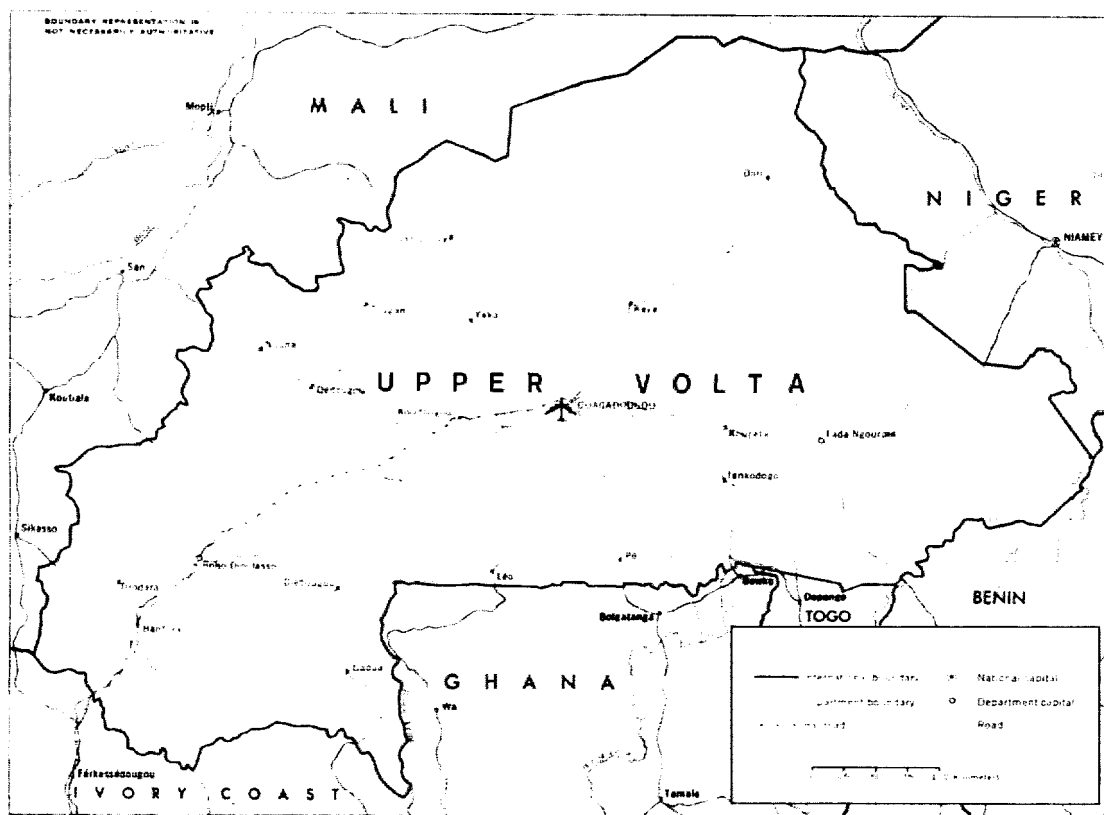
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has also given constitutional sanction to its intelligence and security organization--the National Security Organization--which civilians apparently would like to dismantle so that a civilian leader could set up a similar body presumably more loyal to himself. (CONFIDENTIAL)

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Upper Volta: Lamizana Answers a Union Challenge

President Sangoule Lamizana, Upper Volta's pro-Western leader, last month overcame the first challenge to his five-month-old civilian government by averting a strike by unionized air traffic controllers and staff personnel at the Ouagadougou airport. Although Lamizana recognizes that his decision to meet controllers demands for wage increases would hurt the country's sagging economy, he probably reasoned that a strike would be even more costly. The strike would have closed down both international and local air travel, resulting in a tremendous loss of tax revenue, the restriction of essential imports, and the disruption of travel by many members of the country's important Muslim minority in their annual pilgrimage to Mecca.

Ouagadougou's air controllers decided to call a 10-day strike when Lamizana initially rejected their demands for an across-the-board wage hike and other benefits. Lamizana ordered security forces to prevent demonstrations in the capital during the strike and instructed the police to arrest any demonstrators. The President also said he would place the airport under military control if a strike dragged on.

The President's initial hard-line position was based at least in part on his past experiences with the country's labor unions. In 1975 the unions staged a successful 48-hour general strike, forcing the former military government headed by Lamizana to submit to their wage demands. Lamizana also knew that other disgruntled workers were closely watching the reaction and resolve of the new government.

The potential loss of tax revenues and imports probably played a role in Lamizana's eventual decision to comply with the demands of the air controllers. Lamizana realizes these losses would further damage the country's weak economy and complicate government efforts to deal with inadequate food production and distribution.

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Lamizana's decision to agree to the workers' demands was also probably heavily influenced by pressure from Upper Volta's large Muslim community--about 20 percent of the population. The community urged the President, who is also a Muslim, to settle the dispute as quickly as possible so that their religious pilgrimages to Mecca could proceed on schedule. Lamizana, who relied heavily on the Muslim vote during his election to the presidency last May, apparently felt that the political costs of alienating the religious community would far outweigh the economic repercussions of a wage settlement.

The air controllers may have been inspired to challenge the new government by followers of former President Maurice Yameogo, who was deposed by Lamizana in 1966. The Yameogo group may have hoped it could provoke Lamizana, who retains the rank of Army general, into requesting assistance from the military, a move that would have been highly unpopular with the Voltans.

Although the new civilian regime seems to have emerged relatively unscathed from its serious political test, it could easily stumble over a number of problems such as traditional ethnic tensions, Upper Volta's rising cost of living, and other economic problems. The government's prospects are enhanced by Lamizana's personal popularity and his apparent inclination to choose a pragmatic approach to the country's troubles. (SECRET NOFORN)

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